

APPEAL NO. 170478  
FILED MAY 9, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 24, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to a superior labrum tear of the right shoulder, brachial plexopathy, cervical radiculitis or complex regional pain syndrome/reflex sympathetic dystrophy (CRPS/RSD) of the right arm and hand; (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) by (Dr. H) dated January 28, 2016, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the respondent (claimant) reached MMI on January 1, 2016; and (4) the claimant's IR is 21%.

The appellant (carrier) appeals the hearing officer's determinations regarding the issues of finality, MMI and IR as being legally in error and contrary to the evidence. The appeal file does not contain a response from the claimant.

The hearing officer's determination that the compensable injury of (date of injury), does not extend to a superior labrum tear of the right shoulder, brachial plexopathy, cervical radiculitis or CRPS/RSD of the right arm and hand was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer's determination that the first certification of MMI and assigned IR by Dr. H dated January 28, 2016, became final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the claimant's IR is 21% is supported by sufficient evidence and is affirmed.

Throughout the Decision and Order, including the initial paragraph, the Discussion section and Finding of Fact No. 4, the hearing officer stated that the MMI date assigned by Dr. H on January 28, 2016, is January 1, 2016.

In the Conclusion of Law No. 5 and the Decision section of the Decision and Order, the hearing officer stated:

[The] [c]laimant reached MMI on January 1, 2016.

A review of the record reveals that the MMI date assigned by Dr. H in his Report of Medical Evaluation (DWC-69) dated January 28, 2016, and accompanying narrative report is, in fact, January 5, 2016, rather than January 1, 2016, as indicated by the hearing officer in his decision. There is no DWC-69 in evidence which certifies MMI on January 1, 2016. We accordingly reverse the hearing officer's decision that the claimant reached MMI on January 1, 2016, and render a new decision that the claimant reached MMI on January 5, 2016.

### **SUMMARY**

We affirm the hearing officer's determination that the first certification of MMI and assigned IR from Dr. H dated January 28, 2016, became final under Section 408.123 and Rule 130.12.

We affirm the hearing officer's determination that the claimant's IR is 21%.

We reverse the hearing officer's determination that the claimant reached MMI on January 1, 2016, and render a new decision that the claimant reached MMI on January 5, 2016.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD GERGASKO, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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K. Eugene Kraft  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge